IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9418 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NIGAM SALES CORPORATION - Petitioner(s)

Versus

ASHOK PRABHUBHAI PARMAR - Respondent(s)

==========

Appearance :

MR PS CHAMPANERI for Petitioner(s) : 1,
MRS DT SHAH for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 18/11/2005

CAV JUDGMENT

1.By filing this petition, the petitioner has challenged

the judgment and award dated 22.7.99 passed by the Presiding Officer, Labour Court, Surendranagar in Reference (LCS) No.1279 of 1989, by which the Labour Court was pleased to partly allow the reference and directed the petitioner to reinstate the respondent – workman in service with 20% back wages for the intervening period.

2.It appears from the record that the respondent claims to be the workman of the petitioner institution and was working as Mechanic. It is the case of the petitioner that since the respondent – workman was not familiar with repairing of 2 wheelers and on his request, the petitioner arranged for the training at Pune for the respondent for a period of one year. It is the case of the petitioner that, thereafter, the respondent was again rendering the work of service to the customers of the petitioner in his own garage and was being paid by the customers of the petitioner and therefore there is no relationship of master and servant between the petitioner and the respondent. It is the case of the petitioner that the respondent also used to visit the show room of the petitioner for the purpose of servicing Two Wheelers, Kinetic Honda and Mopeds.

3.It is the case of the respondent before the Labour

Court that without following the provisions of the Industrial Disputes Act, 1947 (“the Act” for short), the petitioner institution has terminated the services of the respondent from 1.3.88. Ultimately, the respondent raised industrial dispute which was referred to the Labour Court, Surendranagar and numbered as Reference (LCS) No.1279 of 1989. Ultimately, the Labour Court, after appreciating the evidence on record, was pleased to partly allow the reference and directed the petitioner to reinstate the respondent – workman in service with 20% back wages for the intervening period.

4. Being aggrieved and dissatisfied with the said judgment and award dated 22.7.1999, the petitioner has preferred the present petition under Article 227 of the Constitution of India.

5. Mr.Champaneri, learned advocate appearing for the petitioner submitted that the Labour Court has failed to appreciate and consider the fact that there was no relation of master and servant between the petitioner and the respondent and thereby has erred in passing the impugned order of reinstatement. He further submitted that the petitioner used to send his two wheeler mopeds for repairs and service at the establishment of the respondent and the respondent was directly taking

necessary charges for repairs from the respective customers. He submitted that the petitioner had arranged for training at Pune and thereafter the respondent – workman was running his autogarage and, therefore, there was no relation of master and servant between the petitioner and the respondent and, therefore, the Labour Court has seriously erred in coming to the conclusion that the respondent was working with the petitioner – corporation. He further submitted that the respondent – workman has failed to establish that he is entitled to the protection under Section 25-F of the Act. It is, therefore, requested to allow the present petition.

6. On the other hand, Ms.Shah learned advocate appearing for the respondent – workman has opposed the petition. Relying upon the decision of the Division Bench of this Court in the case of Surendranagar District Panchayat V/s Dahyabhai Amarsinh, reported in 2003(3) GLH 735, she has submitted that the workman has filed application exh. 7 before the Labour Court for production of necessary documents and in response thereof, the petitioner has filed affidavit before the Labour Court at exh. 8, whereby it is stated that it is not necessary to produce necessary documents as

requested by the respondent – workman and, therefore, the Labour Court has rightly drawn adverse inference against the petitioner. She submitted that the petitioner has committed breach of the provisions of Section 25-F, 25-G and 25-H and the said fact has been established before the Labour Court undisputedly. She has also placed reliance on the decision of this Court in the case of Gujarat Water Supply and Sewerage Board V/s Dinesh M Solanki, reported in 2005(2) GLH 62. It is, therefore, requested to dismiss the present petition.

7. I have given my thoughtful consideration to the submissions made by the learned advocates appearing for the respective parties and have perused the material placed on record.

8. It can be seen from the record that the respondent – workman has filed application at exh. 7 and prayed for production of necessary documents and in response thereto, the petitioner institution filed affidavit vide exh. 8 and has submitted that it is not necessary to produce the necessary documents as prayed for by the respondent – workman. It is also required to be noted that the Labour Court has come to the conclusion that there is a clear breach of the provisions of Section

25-F, 25-G and 25-H of the Act. The Labour Court has found that the petitioner was engaging some other employee in place of the respondent – workman and the details thereof have also not been submitted before the Labour Court. In the present case, as submitted by Mr.Champaneri, learned advocate appearing for the petitioner, the petitioner has arranged for tranining at Pune for the respondent – workman. However, the petitioner has failed to prove before the Labour Court that there was no relation of master and servant between the petitioner and the respondent. Since the petitioner has failed to produce necessary documents before the Labour Court as prayed for by the respondent – workman, the Labour Court raised adverse inference against the petitioner and held that the termination of the respondent – workman is illegal and, therefore, the termination order was quashed and set aside by the Labour Court.

9. In that view of the matter and considering the judgments referred to herein above, I do not find any substance in this petition and, therefore, the same is required to be dismissed. Accordingly, this petition is dismissed. The petitioner is directed to comply with the judgment and award dated 22.7.1999 passed by the

Labour Court, Surendrangar in Reference (LCS) No.1279 of 1989 forthwith. Rule discharged. No costs.

(SHARAD D DAVE, J)

srilatha